IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 147 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI MELABHAI NAYAK

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KG SHETH APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2001

ORAL JUDGEMENT

1. Rule. Mr. K.G. Sheth, learned APP appears on behalf of respondent Nos. 1,2 and 3 and waived service of Rule on their behalf.

2. I have heard the learned advocate for the petitioner and learned APP for the respondents. With their consent, this Revision Application is being finally heard and disposed of.

3. It appears that the muddamal tanker No. GJ-6-T-5418 has been involved in the matter. The learned Additional Sessions Judge has passed an order on 16.1.2001 directing that the aforesaid Muddamal tanker shall be handed over to the present petitioner on condition that the appellant produces a bank guarantee in sum of Rs. 4,70,000/- within a period of 15 days before the Court.

4. The learned advocate for the petitioner submits that the trial may take long time and furnishing bank guarantee might amount to the deposit of amount in toto. That looking to the total amount in respect of which, bank guarantee has been ordered to be produced, it may be very difficult on the part of the petitioner to comply with the requirement of the said order and therefore, the order passed by the learned Additional Sessions Judge is very harsh and it is extremely difficult on the part of the petitioner to comply with the same.

5. It is further submitted that present petitioner may be also directed to furnish solvent security to the satisfaction of the trial Court in the said amount.

6. On hearing the learned advocates for the parties, I am of the opinion that the order passed by the learned Additional Sessions Judge imposing the aforesaid condition appears to be harsh and therefore, the learned advocate for the petitioner appears to be right in arguing that it is difficult to comply with the requirement of the said order. If the order is not complied with, then, naturally, the petitioner would not get the muddamal tanker and therefore, I am of the opinion that the order imposing the aforesaid condition is required to be modified.

7. On hearing the learned advocate for the parties, it can be gathered that in stead of imposing the condition of furnishing bank guarantee to the tune of Rs. 4,70,000/- it would be just and proper to direct the petitioner to furnish solvent security to the tune of Rs. 5 lacs before the learned Collector, Rajkot District at Rajkot with P.R. in like amount.

8. In above view of the matter, the present revision application is partly allowed. The order of the learned

Additional Sessions Judge imposing a condition of furnishing bank guarantee in a sum of Rs. 4,70,000/- for the return of the muddamal tanker to the petitioner is quashed and set aside and instead of it, it is directed that the muddamal tanker No. GJ-6-T-5418 shall be handed over to the petitioner on his furnishing solvent security in a sum of Rs. 5 lacs to the satisfaction of the learned Collector, Rajkot District at Rajkot. Remaining conditions are maintained. Rule is made absolute to that extent. Direct Service permitted.

(D.P. Buch, J.)

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